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OFFICE OF PETITIONS

In re Application of :
Michael E. Ring :
Application No. 10/821,735 : DECISION ON PETITION
Filed: April 8, 2004 :
Attorney Docket No. MER04069 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 30, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The two-month period for filing an appeal brief under 37 CFR 41.37 (accompanied by the fee required by 37 CFR 41.20(b)(2)), runs from the date of this decision.

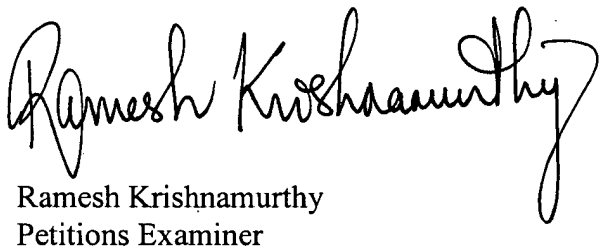
This application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of October 19, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). A two-month extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is March 20, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal; (2) the petition fee of $770; and (3) a proper statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $230 extension of time fee submitted on May 20, 2008, was subsequent to the maximum extendable period for reply, petitioner may request a refund of this fee by writing to the following address: Mail Stop 16, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450. Petitioner may also request a refund for the Notice of Appeal fee of $255 submitted with this petition since the fee was previously paid on May 20, 2008. A copy of this decision should accompany petitioner's request.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571) 272-4584.

This application is being referred to Technology Center AU 3617 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.



Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

JUN 30 2008
PATENT & TRADEMARK OFFICE

PTO/SB/64 (08-03)
Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)	Docket Number (Optional) MER 04069

First named inventor: Michael E. Ring

Application No.: 10/821,735 Art Unit: 3617

Filed: April 8, 2004 Examiner: Le, Mark T.

Title: Method of and an Apparatus for Powering and Controlling a Model Railroad End of Train Device

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX: (703) 308-6916

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee –required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
(4) Statement that the entire delay was unintentional.

1. Petition fee

☒ Small entity-fee $ 770.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee $ _____(37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of Notice of Appeal (identify type of reply):
☐ has been filed previously on _____.
☒ is enclosed herewith.

B. The issue fee of $_____.
☐ has been paid previously on _____.
☐ is enclosed herewith.

This collection of information is required by 37 CFR 1.137. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

07/01/2008 SSITHIB1 00000085 10821735
01 FC:2453 770.00 OP

3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of $_____ for a small entity or $_____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE. The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

June 26, 2008
Date


Signature

Telephone Number: 412-308-0725

Amos Bartoli
Typed or printed name

2640 Pitcairn Road
Address

Monroeville, PA 15146
Address

Enclosures:
☒ Fee Payment
☐ Reply
☐ Terminal Disclaimer Form
☐ Additional sheets containing statements establishing unintentional delay
☒ Other: Notice of Appeal

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

June 26, 2008
Date


Signature

Maureen Mastromonaco
Type or printed name of person signing certificate

Application No: 10/821,135 Date: 10/11/08

CHECKLIST - PETITION TO REVIVE (UNINTENTIONAL) 37 CFR 1.137(b)

Petition under 37 CFR 1.137(b) requires:

1. Petition fee;
2. Reply and/or issue fee;
3. Terminal disclaimer with disclaimer fee - utility and plant filed before 6/8/95 and all design cases;
4. Statement that the entire delay was unintentional.

Petition Date: 10/30/08

Petition Fee: ()$770/SM () $1540/LG () Not Paid

Is statement of unintentional delay present? (✓)YES ()NO (Can statement be construed as unintentional?)

Is petition signed by attorney of record? (✓)YES ()NO Petition address the same as address in palm. (✓)YES ()NO

Mail Date of Office Action: 10/19/07

Type of Office Action: Final Rej

Statutory Response Period Set: () 30 days () 1 month () 2 months (✓) 3 months

Ext of time obtained w/in SSP: ()None ()1 month ()2 months ()3 months ()4 months

Abandonment Date: 1/20/08

Type of reply received: Notice of Appeal

Terminal Disclaimer required: ()YES (✓)NO (utility applications filed after 6/8/95 or before 5/29/00 and all design applications)

Petition Decision Codes

502 - 37 CFR 1.137(b) Revival based on unintentional delay in abandon application
510 - 37 CFR 1.137(b) Revival to accept late payment of issue fee (unintentional)

502 Granted

Fee Codes

1453/2453 *$1540/$770* *502/510 Petitions*

Paralegal: JoAnne

()Dismissed (✓)Granted

MAG:01/07

Attorney/Agent Information for 10/821735

Attorney/Agent Name	Attorney/Agent Registration Number	Attorney/Agent Telephone Number
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Correspondence Address for 10/821735

Customer Number	Contact Information	Address
No Customer # Delivery Mode: PAPER	Telephone: (413)380-0725 Fax: (412)380-0748 E-Mail: No E-Mail Address	JAMES RAY & ASSOCIATES 2640 Pitcairn Road Monroeville PA 15146

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RAM Fee History Query

Revenue Accounting and Management

Name/Number: 10821735 Total Records Found: 14

Start Date: Any Date End Date: Any Date

Accounting Date	Sequence Num.	Fee Type	Fee Code	Fee Amount	Mailroom Date	Payment Method
07/01/2008	00000161	1	2453	$770.00	06/30/2008	CC
07/01/2008	00000162	1	2401	$255.00	06/30/2008	CC
05/20/2008	00000105	1	2401	$255.00	05/20/2008	CC
05/20/2008	00000106	1	2252	$230.00	05/20/2008	CC
03/24/2008	00000092	1	2252	$230.00	03/24/2008	CC
09/14/2007	00000069	1	2253	$510.00	09/14/2007	CC
02/06/2007	00000023	1	2252	$225.00	02/05/2007	CC
02/05/2007	00000016	1	2801	$395.00	02/01/2007	CC
08/07/2006	00000257	1	2251	$60.00	08/07/2006	CC
01/18/2006	00000023	1	2251	$60.00	01/17/2006	CC
07/23/2004	00000001	1	1051	-$130.00	07/19/2004	OP
07/23/2004	00000002	1	2051	$65.00	07/19/2004	CC
07/20/2004	00000109	1	1051	$130.00	07/19/2004	CC
04/13/2004	00000130	1	2001	$385.00	04/08/2004	CC